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December 29, 2010

Office of Chief Counsel
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Apache Corporation - Omission of Stockholder Proposal
Submitted by Mr. John Chevedden

Ladies and Gentlemen:

On behalf of Apache Corporation, a Delaware corporation (the "Company" or "Apache"), pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), I am writing to inform you that Apache intends to omit from the proxy statement for its 2011 Annual Meeting of Stockholders (the "2011 Proxy Materials") a stockholder proposal (the "Proposal") received from John Chevedden (the "Proponent").

Pursuant to Rule 14a-8(j), we have filed this notice with the Securities and Exchange Commission (the "Commission") no later than eighty calendar days before the Company intends to file its definitive 2011 Proxy Materials with the Commission and concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) provides that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k).

## I. The Proposal

The Proposal requests that the Board of Directors "take the steps necessary so that each shareholder voting requirement impacting our company, that calls for a greater than simple majority vote, be changed to a majority of the votes cast for and against the proposal in compliance with applicable laws." A copy of the Proposal and the Supporting Statement is attached as Exhibit A.

## II. Basis for Exclusion

We hereby inform the Staff that we intend to exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the required proof of stock ownership in response to the Company's proper request for that information.

## III. Analysis

### The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal

A. *Background*

The Proposal, dated November 24, 2010, was received by the Company on November 29, 2010. *See* Exhibit A. On the same date, Apache received from the Proponent via electronic mail a letter from Mr. Michael P. Wood, Senior Portfolio Manager of RAM Trust Services ("RTS"), detailing the Proponent's purported proof of ownership (the "RTS Letter"). *See* Exhibit B. The RTS Letter stated that RTS was confirming that the Proponent has held no less than 50 shares of Apache stock in an account at RTS since November 7, 2008, and that RTS, in turn, holds those shares through the Northern Trust Company in an account under the name Ram Trust Services. Notably, the RTS Letter does not indicate that it is an introducing broker. Similarly, the RTS Letter goes to great lengths to make it clear that it does not have custody of the shares of Apache common stock purportedly owned by the Proponent. Neither the Proponent nor RTS are listed in the Company's stock records as record holders of any Apache common stock as is required by Rule 14a-8(b).

Accordingly, the Company sought additional verification of the Proponent's eligibility to submit the Proposal. On December 7, 2010, within 14 calendar days of the Company's receipt of the RTS Letter, the Company sent a letter addressed to the Proponent (the "Deficiency Notice"). *See* Exhibit C. The Deficiency Notice informed the Proponent that he had failed to comply with the procedural requirements of Rule 14a-8 and explained how he could cure the procedural deficiency. In part, the Deficiency Notice stated:

> Apache has reviewed the list of record owners of the company's common stock, and neither you, nor RAM Trust Services, nor Northern Trust is listed as an owner of Apache common stock. Pursuant to the SEC Rule 14a-8(b), since neither you nor RAM Trust Services, nor Northern Trust appear to be record holders of Apache common stock, you must provide a written statement from the record holder of the shares you claim to beneficially own verifying that you continually have held the required amount of Apache common stock for at least one year as of the date of your submission of the proposal. As required by Rule 14a-8(f), you must provide us with this statement within 14 days of your receipt of this letter.

The Proponent responded on December 20, 2010 via electronic mail. *See* Exhibit D. His response is copied below:

Dear Ms. Peper,

Thank you for acknowledging the rule 14a-8 proposal. Based on the October 1, 2008 Hain Celestial no-action decision, Ram Trust Services is my introducing securities intermediary and hence the owner of record for purposes of Rule 14a-8(b). I intend to hold the shares of Apache common stock that I own through the date of the meeting. Please let me know if there is another question.

Sincerely,
John Chevedden

For the reasons stated below, the RTS letter and the Proponent's electronic mail response to the Company's Deficiency Notice do not satisfy the requirements of Rule 14a-8(b)(2) and the Proposal is thus excludable pursuant to Rule 14a-8(f).

B. *Discussion*

The Proposal may be properly excluded from the Proxy Materials in accordance with Rule 14a-8 for three reasons. First, RTS is not a "record" holder of the Company's securities. Second, RTS does not qualify as an introducing broker under the SEC's prior no-action positions. And, finally, the exclusion of the Proposal is dictated by a final decision of a federal district court that is binding upon the Company and Proponent.

1. The Proposal May Be Excluded Pursuant To Rule 14a-8(B) And Rule 14a-8(F)(1) Because RTS Is Not A "Record" Holder Under The SEC's Definition Of That Term

Proponent has failed to provide the Company, within the time period set forth in Rule 14a-8(f)(l), the requisite verification that the Proponent satisfies the eligibility requirements of Rule 14a-8(b). Rule 14a-8(b)(1) provides that in order to be eligible to submit the proposal, the Proponent must have continuously held at least $2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date on which the Proposal is submitted.

Rule 14a-8(b)(2) provides that the Proponent, who is not a registered holder of the Company's securities, must prove his eligibility at the time of his submission in one of two ways: he may submit a written statement from the record holder of the securities or he may submit copies of Schedules 13D or 13G or a Form 3, 4 or 5.

In response to the RTS Letter, the Company's Deficiency Letter described the ownership requirements of Rule 14a-8, identified the deficiency in the RTS Letter, provided adequate detail about what the Proponent had to do to cure the deficiency and explained that the Proponent's response must be postmarked or transmitted electronically no later than 14 days from the date of receipt of the Deficiency Letter.

The electronic mail from Proponent submitted in response to the Deficiency Notice claims that RTS serves as the Proponent's "introducing securities intermediary" and hence the owner of record for purposes of Rule 14a-8(b). However, RTS does not hold custody of securities and therefore is not a record holder of the Company's securities. Rule l4a-l(b)(i) defines "record holder" for the purposes of Rules l4a-13,14b-1 and 14b-2 as follows:

> For purposes of Rules l4a-13, l4b-1 and l4b-2, the term "record holder" means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 174 of the Act. 17 C.F.R. §240.14a-(1)(b)(i).

Even though this definition does not apply to Rule 14a-8, it is instructive in determining whether RTS is a record holder in this case. Even if this broad definition were applied to Rule 14a-8, RTS is not a "record" holder because (1) it is not a "broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers" and (2) it does not hold or have custody of securities and is not a participant in a §17A clearing agency.

a) RTS Is An Investment Adviser And Is Not A Broker, Dealer, Voting Trustee, Bank, Association Or Other Entity That Exercises Fiduciary Powers

On March 15, 2005, RTS and certain of its investment advisers signed a Consent Agreement with the State of Maine Office of Securities, agreeing that RTS is "an investment adviser company, and identifying several RTS employees, including Michael P. Wood as "investment advisor representatives." In the Consent Agreement, RTS agreed that its employees would comply with all licensing and other legal requirements governing investment advisors in the State of Maine. The Consent Agreement makes clear that RTS is "an investment adviser company."[1]

Further, on its website, RTS says that it "provides superior, highly personalized and fully integrated financial services primarily to high net worth families, individuals and private foundations," that "Unlike many investment managers, Ram Trust Services is never content to rely solely on outside sources of information in assessing our investments," and refers to itself as "investment advisors who invest in tandem with our clients." *See* www.ramtrust.com/strategy.htm. While Ram Trust calls itself "investment managers" and "investment advisors" on its website, it does not anywhere call itself a "broker" or an "introducing broker."

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[1] *Apache Corporation v. John Chevedden*, No. 4:10-cv-00076 (S.D. Tex. March 10, 2010).

b) RTS Does Not Purport To Be, And Could Not Legally Be, The Custodian Or Holder Of Apache Stock

Notably, nowhere in RTS's purported proof of ownership does it indicate in any way that it is the custodian or a holder of Apache stock. That is because RTS could not legally be the custodian or holder of Apache stock. The Investment Advisers Act of 1940, 17 C.F.R. §275.206(4)- 2(a), makes it "a fraudulent, deceptive, or manipulative act" for an investment adviser "to have custody of client funds or securities" unless it's a "Qualified Custodian." Ram Trust is not a "Qualified Custodian" because it is not a bank, a "broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1943." *See* 17 C.F.R. §275.206(4)-2(c)(3). In the absence of such custody, RTS is not and could not be a "record holder" under Rule 14a-1(b) because it does not have a sufficient nexus with the securities reliably to verify that the stockholder status and eligibility requirements of Rule 14a-8 have been met.

Staff Legal Bulletin 14 states that a written statement from a stockholder's investment advisor is insufficient evidence of ownership *unless* the investment advisor is also the record holder of the shares. Because RTS is not a record holder of the Proponent's shares, the exception for investment advisors that also are record holders does not apply. Accordingly, RTS could not, as a matter of law and in accordance with past staff interpretations, provide proof of ownership in accordance with Rule 14a-8.

Since the Proponent failed to provide proof of ownership from the record holder of his shares, the Proponent has failed to establish, within the 14 days prescribed by Rule 14a-8(f)(1), his eligibility to submit the Proposal. The Staff has granted no action relief previously where the Proponent attempted to establish by providing documentary evidence of ownership by a person other than the "record" holder. *See e.g. JP Morgan Chase & Co.* (Feb. 15, 2008); *Verizon Communications, Inc.* (Jan. 25, 2008); *The McGraw Hill Companies, Inc.* (Mar. 12, 2007); *MeadWestvaco Corporation* (Mar. 12, 2007). Thus, because RTS is not a record holder of Apache securities, its letter is insufficient to demonstrate that the Proponent satisfies the minimum ownership requirements of Rule 14a-8.

2. The Proposal May Be Excluded Because RTS is Not an Introducing Broker Under the 2008 *The Hain Celestial Group, Inc.* No-Action Letter

Proponent claims that RTS serves as Proponent's introducing securities intermediary, and, as such, qualifies as an introducing broker under the no-action letter in *The Hain Celestial Group, Inc.* (Oct. 1, 2008). This however is incorrect based on the statements of RTS itself and on the Staff's position as expressed in *The Hain Celestial Group* (Oct. 1, 2008). In that letter, the stockholder at issue had provided a letter from its introducing broker in order to substantiate its satisfaction of Rule 14a-8's minimum ownership requirements. Despite well supported arguments by the company requesting no-action relief, as well as a number of previously issued no-action letters that reached contrary conclusions, the Staff broke from its historical approach and ultimately ruled that the letter from the introducing broker satisfied the rule.

The Staff stated that a written statement from an introducing broker-dealer constitutes a statement from a "record" holder of securities for purposes of satisfying Rule 14a-8(b)(2)(i). The Staff went on to define an introducing broker-dealer as: "a broker-dealer that is not itself a participant of a registered clearing agency but clears its customers' trades through and establishes accounts on behalf of its customers at a broker-dealer that is a participant of a registered clearing agency and that carries such accounts on a fully disclosed basis."

Under the definition of "record holder" expressed in *The Hain Celestial Group*, RTS does not qualify as an introducing broker, as it is not a broker-dealer at all. Instead, and as discussed above, RTS is "a registered investment adviser" and it is not, and cannot be, Chevedden's introducing broker under the SEC's no-action letter. Indeed, RTS's own form of "Investment Management Agreement" confirms that it is not an introducing broker. ("RAM will execute all requested purchases and sales of securities through Atlantic Financial Services of Maine, Inc. ("AFS"), or another registered broker-dealer of RAM's selection."). As the SEC has made clear on numerous occasions, a written statement from an investment advisor is insufficient to verify continuous ownership under Rule 14a-8 unless that investment advisor is also the record holder of the shares. *See* Section C.1.c. Staff Legal Bulletin No. 14 (July 13, 2001); *see also, e.g., Clear Channel Communications* (Feb. 9, 2006) (concurring in exclusion where the proponent submitted ownership verification from an investment adviser that was not a record holder). Based on the information available to the company, RTS is an investment adviser, is not an introducing broker, and is not the record holder of Chevedden's purported stock. The Proponent's electric mail statement that RTS is a "non-depository trust company" does not change this conclusion.

3. Recent SEC Rulemakings Suggest that Additional Proof of Ownership Would be Required Even if RTS Was an Introducing Broker

The SEC recently adopted Rule 14a-11, which will require that a public company include in its proxy materials candidates to the board who have been nominated by stockholders who meet certain conditions. *See* SEC Rel. No. 33-9136 (Aug. 25, 2010) (the "Adopting Release"). Among other aspects of Rule 14a-11, a stockholder who owns 3% of the voting power of a company's securities is entitled to require that the company disclose that stockholder's nominees to the board in the company's proxy materials if the stockholder complies with the procedural and substantive requirements of the rule. *See generally* Rule 14a-11. Where the nominating stockholder under Rule 14a-11 is not the registered holder of the securities, the nominating stockholder would be required to demonstrate ownership by attaching to its notice of nomination on Schedule 14N a written statement from the "record" holder of the nominating stockholder's shares (usually a broker or bank) verifying that, at the time of submitting the stockholder notice to the company on Schedule 14N, the nominating stockholder continuously held the securities being used to satisfy the applicable ownership threshold for a period of at least one year.

Notably, Schedule 14N provides that a nominating stockholder who owns shares through a broker that is not a participant in a clearing agency acting as a securities depository must both (1) submit a written statement or statements (the "initial broker statement") from the broker with

which the nominating stockholder maintains an account that provides the information about securities ownership set forth above and (2) submit a separate written statement from the clearing agency participant through which the securities of the nominating stockholder are held, that (a) identifies the broker for whom the clearing agency participant holds the securities, and (b) states that the account of such broker has held, as of the date of the separate written statement, at least the number of securities specified in the initial broker statement, and (c) states that this account has held at least that amount of securities continuously for at least three years.

Applying this approach here, the Proponent should be required to obtain a letter from his "introducing broker" (if he has one) as well as from the DTC participant through which the introducing broker holds shares. We urge the Staff to follow the same protocols with respect to introducing brokers or even an investment adviser like RTS. In both cases the person requiring proof of ownership is not otherwise in a position to verify that the purported stockholder satisfies the minimum ownership requirements of the rule. We believe that this verification is critical - regardless of whether the stockholder is submitting a proposal under Rule 14a-8 or making a nomination pursuant to Rule 14a-11.

4. The Proposal May Be Excluded Because The District Court's Decision in *Apache Corporation v. John Chevedden* Dictates its Exclusion.

a) The District Court in the *Apache* Decision Ruled that These Same Facts Provide a Basis for Exclusion Under Rule 14a-8

On March 10, 2010, the United States District Court for the Southern District of Texas ruled that Apache was not obligated to include the Proponent's proposal in its 2010 proxy materials.[2] Specifically, the court determined that Proponent had failed to satisfy the requirements of Rule 14a-8(b)(2) where, as here, the only documentation submitted within the 14-day time period purporting to substantiate his stock ownership was a letter from RTS. In that case, ruling in Apache's favor and concluding that Chevedden's letter from RTS did not satisfy Rule 14a-8(b)(2), the court stated:

> The only issue before this court is whether the earlier letters from RTS – an unregistered entity that is not a [Depositary Trust Company ("DTC")] participant – were sufficient to prove eligibility under Rule 14a-8(b)(2), particularly when the company has identified grounds for believing that the proof of eligibility is unreliable. This court concludes that the December 2009 RTS letters are not sufficient.
>
> ...
>
> Although section 14 of the Securities Exchange Act of 1934 (governing proxies), under which Rule 14a-8 was promulgated, was intended to "give true vitality to the concept of corporate democracy," Medical Comm. for Human Rights v. SEC, 432 F.2d 659, 676 (D.C. Cir. 1970), cert. granted sub nom SEC v. Medical Comm. for Human Rights, 401

[2] *See Apache Corporation v. John Chevedden*, No. 4:10-cv-00076 (S.D. Tex. March 10, 2010).

> U.S.973, 91 S. Ct. 1191 (1971), vacated as moot, 404 U.S. 403, 92 S. Ct. 577 (1972), that does not necessitate a complete surrender of a corporation's rights during proxy season. Rule 14a-8 requires a shareholder seeking to participate to register as a shareholder or prove that he owns a sufficient amount of stock for a sufficient period to be eligible. *Id* at 29.

The court reached this decision because RTS was not a registered broker dealer or a DTC participant. In response to the Company's deficiency notice prior to the *Apache* case, RTS had submitted a letter stating that RTS was the "introducing broker for the account of John Chevedden" and that Northern Trust was the custodian of his Apache stock. The district court found this insufficient to satisfy the requirements of Rule 14a-8(b)(2) because RTS could not be considered a record holder or an introducing broker for purposes of the rule. The court reached this decision because of "the inconsistency between the publicly available information about RTS and the statement in [RTS's] letter that RTS is a 'broker.'" Specifically, RTS was not registered with FINRA, SIPC, or the SEC as a broker, but was rather registered as an investment advisor under Maine law, and its website advertised itself as such. Chevedden argued that the statement in Rule 14a-8(b)(2) that the "record holder is usually a bank or broker" meant that the letters from RTS describing itself as an introducing broker were sufficient proof of ownership. The court explicitly rejected this interpretation of the rule on the basis that it "would require companies to accept *any* letter purporting to come from an introducing broker, that names a DTC participating member with a position in the company, regardless of whether the broker was registered or the letter raised questions" as to proof of ownership. The court found that such an interpretation would reduce the requirement to simply provide a letter from "a self-described 'introducing broker.'" Thus, the court rejected the RTS letter as sufficient proof of ownership. The same issues about RTS's status as a self-proclaimed broker versus an investment advisor exist here. In both instances all the evidence indicates that RTS is not an introducing broker.

Indeed, in the *Apache* case, Proponent had put forth *more* evidence purporting to substantiate his stock ownership than he has put forth here. In that case, in addition to the RTS letter, the Northern Trust Company submitted a letter (albeit after the 14-day deadline) stating that it held the shares of the Apache stock as custodian for RTS. Here no such substantiation on the part of Northern Trust was submitted. In the *Apache* case, because the Northern Trust letter was submitted after the 14-day time limit, the court did not consider it in determining whether Proponent had met Rule 14a-8(b)(2)'s requirements; however, the court did indicate that Northern Trust may have qualified as a record holder under the rule. The court noted that Northern Trust is a DTC participant, and that "a separate certification from a DTC Participant allows a public company at least to verify that the participant does in fact hold the company's stock by obtaining the Cede breakdown from the DTC..." However, no such letter from Northern Trust was ever submitted here. Thus, Proponent is making the same argument (that a letter from RTS alone is sufficient to substantiate stock ownership) as was explicitly rejected by the district court in its March 10, 2010 opinion.

b) The *Apache* Decision is Binding on the Proponent and Apache and the Staff Should Defer to That Decision

The Staff has repeatedly acknowledged that, "a determination reached in such letters cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include a shareholder proposal in its proxy materials." Thus, even if the SEC staff has spoken, "a court must independently analyze the merits of a dispute." *Apache Corp. v. New York City Employees Ret. Sys.*, 621 F. Supp. 2d 444, 449 (S.D. Tex. 2008) (citing *New York City Employees' Ret. Sys. v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992)). "Because the staff's advice on contested proposals is informal and nonjudicial in nature, it does not have precedential value with respect to identical or similar proposals submitted to other issuers in the future."[3] Because that case adjudicated the same issue between the same parties on effectively the same facts as are present here, Apache and Proponent are bound by that 2010 order. As in the doctrines of *res judicata*[4] and collateral estoppel, the parties may not relitigate the same issue that was previously settled by a final judgment between the same parties based upon a common nucleus of operative facts.

The SEC has made clear that no-action letters do not create binding precedent in the way of a federal court decision on the merits.[5] Ultimately, because it is well-established that the Staff's responses to contested proposals are "informal and nonjudicial in nature, [and] do[] not have precedential value with respect to identical or similar proposals submitted to other issuers in the future," the *Apache* case should dictate the outcome. A final decision on the merits in a federal district court on the same issues, between the same parties, and upon the same nucleus of operative facts precludes one of the parties from relitigating the same issue subsequently. Thus, even if the SEC is not bound by the *Apache* case's outcome, the Company and the Proponent (both parties to that suit) are so bound under the generally accepted principles of *res judicata* and collateral estoppel. *See Agilectric Power Partners, Ltd. v. General Electric, Co.*, 20 F.3d 663, 664 (5th Cir. 1994); *States v. Shanbaum*, 10 F.3d 305, 310 (5th Cir. 1994); *Steve D. Thompson Trucking, Inc. v. Dorsey Trailers, Inc.*, 870 F.2d 1044, 1045 (5th Cir. 1989).

In this regard, we note that the Staff has historically deferred to decisions in federal court

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[3] Statement of Informal Procedures for the Rendering of Staff Advice with Respect to Shareholder Proposals, S.E.C. Release No. 34-12599, 1976 WL 160411 (July 7, 1976).

[4] A doctrine applicable in Texas federal courts. *See, e.g. States v. Shanbaum*, 10 F.3d 305, 310 (5th Cir. 1994) (stating that res judicata (or issue preclusion) is appropriate if: 1) the parties to both actions are identical (or at least in privity); 2) the judgment in the first action is rendered by a court of competent jurisdiction; 3) the first action concluded with a final judgment on the merits; and 4) the same claim or cause of action is involved in both suits).

[5] *See* Statement of Informal Procedures for the Rendering of Staff Advice with Respect to Shareholder Proposals, Exchange Act Release No. 12,599, [1976-1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶80,635, at 86,606 (July 7, 1976) ("[T]he staff's views are advisory only," and management's decision to accept or reject that advice "is subject to review by a district court in the event appropriate enforcement action is instituted by... the proponent.").

where a stockholder proposal raises issues with respect to a particular company that have been addressed by a court with jurisdiction over such company. For example, in 2007, the Staff declined to take a position with respect to a stockholder proposal that Hewlett-Packard sought to exclude from its proxy materials in reliance on Rule 14a-8(i)(8) where the application of Rule 14a-8(i)(8) to such proposal had been addressed by the Court of Appeals for the Ninth Circuit. In its response, the Staff stated:

> One of the United States Courts of Appeals has recently addressed the scope of rule 14a-8(i)(8). See American Federation of State, County and Municipal Employees, Employees Pension Plan v. American International Group, Inc. (2d Cir., Sep. 5, 2006). This decision disagreed with certain prior staff interpretations upon which you have relied as precedent. Your letter, however, assumes that the Ninth Circuit is the applicable jurisdiction for purposes of this request. Since we are unable to dispute or concur in this assumption, we express no view concerning whether HP may exclude the proposal under rule 14a-8(i)(8) as relating to an election for membership on its board of directors.

*See Hewlett-Packard Company* (Jan. 22, 2007). Here, Apache is unambiguously subject to the jurisdiction of the court in the *Apache* case. In that case, the court made clear that the proof of ownership offered by John Chevedden does not satisfy the requirements of Rule 14a-8. Accordingly, the Staff should defer to the ruling in the *Apache* case.[6]

## IV. Conclusion

Rule 14a-8 requires that a stockholder who intends to rely on the rule substantiate its satisfaction of the rule's minimum ownership requirements. John Chevedden has failed to satisfy this requirement because (i) he has submitted proof of ownership from an entity that is not a "record" holder of the Company's securities, (ii) the entity providing proof of ownership is not an introducing broker under the SEC's prior rulings, and (iii) Apache and John Chevedden are subject to a final decision of a federal district court that found that the proof of ownership that has been provided is insufficient as a matter of law.

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[6] We are aware that since the *Apache* case, there have been several instances where the SEC Staff has declined to apply the *Apache* decision in subsequent no-action letters. For example, Devon Energy and Union Pacific both cited the *Apache v. Chevedden* decision in their no-action requests against proposals filed by Chevedden. In their no-action requests, Devon and Union Pacific argued that Chevedden's ownership statements (supporting letters from RTS) were insufficient. The staff rejected both requests without analyzing or addressing the companies' reliance on the *Apache* case. However, those cases are distinguishable from the one at hand. In both the Devon and Union Pacific cases, the companies were requesting a waiver of the 80-day filing requirement in Rule 14a-8(j)(i). Further, in the Devon case, Devon failed to send a letter of deficiency to Chevedden within the 14-day period for timely notification of deficiency under Rule 14a-8(f), and in the Union Pacific case, Chevedden argued the notice was insufficiently detailed. Here, the Company is not requesting a waiver of the 80-day requirement, nor is Chevedden claiming that the deficiency notice was untimely or insufficient. While the Staff did not indicate the basis for its rejection of the Devon and Union Pacific petitions, we believe that these issues may have been relevant or contributing factors to the Staff's decisions.

Based on the foregoing, we are notifying the Staff and the Proponent as required by Rule 14a-8(j) that the Company intends to exclude the Proposal in reliance on Rule 14a-8(f).

Sincerely,

Cheri L. Peper
Corporate Secretary

# Exhibit A

**JOHN CHEVEDDEN**

***FISMA & OMB Memorandum M-07-16***

Ms. Cheri L. Peper
Corporate Secretary
Apache Corporation
2000 Post Oak Blvd Ste 100
Houston TX 77056
Phone: 713 296-6000
FX: 713 296-6496
Fax: 713-296-6480
F: 713-296-6805



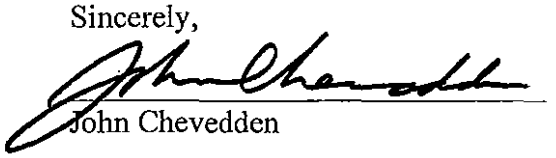
Dear Mr. Peper,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is submitted for the next annual shareholder meeting. Rule 14a-8 requirements are intended to be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to ***FISMA & OMB Memorandum M-07-16***

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to ***FISMA & OMB Memorandum M-07-16***

Sincerely,



John Chevedden

November 29, 2010

Date

cc: Sarah B. Teslik
Senior Vice President – Policy and Governance

[APA: Rule 14a-8 Proposal, November 24, 2010]

**3* – Adopt Simple Majority Vote**

RESOLVED, Shareholders request that our board take the steps necessary so that each shareholder voting requirement impacting our company, that calls for a greater than simple majority vote, be changed to a majority of the votes cast for and against the proposal in compliance with applicable laws.

Corporate governance procedures and practices, and the level of accountability they impose, are closely related to financial performance. Shareowners are willing to pay a premium for shares of corporations that have excellent corporate governance. Supermajority voting requirements have been found to be one of six entrenching mechanisms that are negatively related with company performance. See "What Matters in Corporate Governance?" Lucien Bebchuk, Alma Cohen & Allen Ferrell, Harvard Law School, Discussion Paper No. 491 (09/2004, revised 03/2005).

This proposal topic won from 74% to 88% support at the following companies: Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included William Steiner, James McRitchie and Ray T. Chevedden.

If our Company were to remove required supermajority, it would be a strong statement that our Company is committed to good corporate governance and its long-term financial performance.

The merit of this Simple Majority Vote proposal should also be considered in the context of the need for additional improvement in our company's 2010 reported corporate governance status:

The Corporate Library www.thecorporatelibrary.com, an independent investment research firm said, "We are affirming Apache's D rating. The company's recent federal lawsuit against a shareholder resolution filer, challenging commonly-used procedures for demonstration of stock ownership, was an unusually aggressive move and an indicator of poor shareholder relations."

The Corporate Library also rated our company "High Governance Risk," "Very High Concern" in Board Composition and "High Concern" in Executive Pay – $25 million for Raymond Plank, retired Chairman.

CEO Steven Farris's base salary was above the 75th percentile of the peer group. The 2010 performance program pays out 50% if the company's Total Shareholder Return rank is in the lower quartile or underperforming a majority of our peers. Raymond Plank was due a $13 million lump sum.

There were also concerns regarding board entrenchment and succession planning: all but one director had from 10 to 33-years long-tenure (as tenure increases independence declines). Six directors were age 72 to 81. Our board was the only significant directorship for 9 of our 11 directors. This could indicate a significant lack of current transferable director experience.

Two directors were inside related. Directors Frederick Bohen, George Lawrence and Patricia Graham attracted our highest negative votes.

Our board had 3-year terms for directors and we had neither an independent Chairman nor a Lead Director. We had no proxy access, no cumulative voting and no shareholder right to act by written consent or to call a special meeting. We had a poison pill locked in until 2016.

Please encourage our board to respond positively to this proposal to initiate improved governance: **Adopt Simple Majority Vote – Yes on 3.***

---

Notes:
John Chevedden, ***FISMA & OMB Memorandum M-07-16*** sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

* Number to be assigned by the company

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:
>
> • the company objects to factual assertions because they are not supported;
>
> • the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
>
> • the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
>
> • the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> ***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).
Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email***FISMA & OMB Memorandum M-07-16***

FLR:
RM#: 1056A
Peper Cheri

CYHRM0341940?

TO: Peper Cheri
PH: (713) 296-6507
BDG:
RM: 1056A
PCS: 1

CARR: United States Postal Service
TRK#: 70092820000162153248
RCVD: 11/29/2010 0928

***FISMA & OMB Memorandum M-07-16***

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FIRST CLASS

Ms. Cheri L. Peper
Corporate Secretary
Apache Corporation
2000 Post Oak Blvd Ste 100
Houston TX 77056

7009 2820 0001 6215 3248

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
CERTIFIED MAIL™

7009 2820 0001 6215 3248

***FISMA & OMB Memorandum M-07-16***

# Exhibit B

Peper, Cheri

**From:** ***FISMA & OMB Memorandum M-07-16***
**Sent:** Monday, November 29, 2010 8:01 PM
**To:** Peper, Cheri
**Cc:** Teslik, Sarah
**Subject:** Rule 14a-8 Proposal (APA)
**Attachments:** CCE00008.pdf

Dear Ms. Peper,
Please see the attached Rule 14a-8 Proposal.
Sincerely,
John Chevedden

**JOHN CHEVEDDEN**

***FISMA & OMB Memorandum M-07-16***

Ms. Cheri L. Peper
Corporate Secretary
Apache Corporation
2000 Post Oak Blvd Ste 100
Houston TX 77056
Phone: 713 296-6000
FX: 713 296-6496
Fax: 713-296-6480
F: 713-296-6805

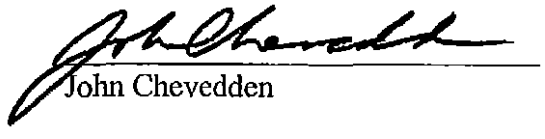
Dear Ms. Peper,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is submitted for the next annual shareholder meeting. Rule 14a-8 requirements are intended to be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to ***FISMA & OMB Memorandum M-07-16***

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to ***FISMA & OMB Memorandum M-07-16***

Sincerely,



John Chevedden

November 29, 2010

Date

cc: Sarah B. Teslik
Senior Vice President – Policy and Governance

[APA: Rule 14a-8 Proposal, November 24, 2010]

**3* – Adopt Simple Majority Vote**

RESOLVED, Shareholders request that our board take the steps necessary so that each shareholder voting requirement impacting our company, that calls for a greater than simple majority vote, be changed to a majority of the votes cast for and against the proposal in compliance with applicable laws.

Corporate governance procedures and practices, and the level of accountability they impose, are closely related to financial performance. Shareowners are willing to pay a premium for shares of corporations that have excellent corporate governance. Supermajority voting requirements have been found to be one of six entrenching mechanisms that are negatively related with company performance. See "What Matters in Corporate Governance?" Lucien Bebchuk, Alma Cohen & Allen Ferrell, Harvard Law School, Discussion Paper No. 491 (09/2004, revised 03/2005).

This proposal topic won from 74% to 88% support at the following companies: Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included William Steiner, James McRitchie and Ray T. Chevedden.

If our Company were to remove required supermajority, it would be a strong statement that our Company is committed to good corporate governance and its long-term financial performance.

The merit of this Simple Majority Vote proposal should also be considered in the context of the need for additional improvement in our company's 2010 reported corporate governance status:

The Corporate Library www.thecorporatelibrary.com, an independent investment research firm said, "We are affirming Apache's D rating. The company's recent federal lawsuit against a shareholder resolution filer, challenging commonly-used procedures for demonstration of stock ownership, was an unusually aggressive move and an indicator of poor shareholder relations."

The Corporate Library also rated our company "High Governance Risk," "Very High Concern" in Board Composition and "High Concern" in Executive Pay – $25 million for Raymond Plank, retired Chairman.

CEO Steven Farris's base salary was above the 75th percentile of the peer group. The 2010 performance program pays out 50% if the company's Total Shareholder Return rank is in the lower quartile or underperforming a majority of our peers. Raymond Plank was due a $13 million lump sum.

There were also concerns regarding board entrenchment and succession planning: all but one director had from 10 to 33-years long-tenure (as tenure increases independence declines). Six directors were age 72 to 81. Our board was the only significant directorship for 9 of our 11 directors. This could indicate a significant lack of current transferable director experience.

Two directors were inside related. Directors Frederick Bohen, George Lawrence and Patricia Graham attracted our highest negative votes.

Our board had 3-year terms for directors and we had neither an independent Chairman nor a Lead Director. We had no proxy access, no cumulative voting and no shareholder right to act by written consent or to call a special meeting. We had a poison pill locked in until 2016.

Please encourage our board to respond positively to this proposal to initiate improved governance: **Adopt Simple Majority Vote – Yes on 3.***

---

Notes:
John Chevedden, ***FISMA & OMB Memorandum M-07-16*** sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

* Number to be assigned by the company

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
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> ***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).
Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***FISMA & OMB Memorandum M-07-16***

# RAM TRUST SERVICES

November 29, 2010

John Chevedden

***FISMA & OMB Memorandum M-07-16***

To Whom It May Concern,

Ram Trust Services is a Maine chartered non-depository trust company. Through us, Mr. John Chevedden has continuously held no less than 50 shares of Apache (APA) common stock, CUSIP #037411105, since at least November 7, 2008. We in turn hold those shares through The Northern Trust Company in an account under the name Ram Trust Services.

Sincerely,

Michael P. Wood
Sr. Portfolio Manager

45 Exchange Street Portland Maine 04101 Telephone 207 775 2354 Facsimile 207 775 4289

# Exhibit C

* * * COMMUNICATION RESULT REPORT ( DEC. 7. 2010 12:14PM ) * * *

FAX HEADER: APACHE CORP SECY

| TRANSMITTED/STORED : DEC. 7. 2010 12:07PM FILE MODE | OPTION | ADDRESS | RESULT | PAGE |
|---|---|---|---|---|
| 845 MEMORY TX | | ***FISMA & OMB Memorandum M-07-16*** | OK | 5/5 |

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E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

2000 POST OAK BOULEVARD / SUITE 100 / HOUSTON, TEXAS 77056-4400

(713) 296 6000
WWW.APACHECORP.COM

December 7, 2010

Mr. John Chevedden

***FISMA & OMB Memorandum M-07-16***

Re: Rule 14a-8 Proposal

Dear Mr. Chevedden:

On November 29, 2010, we received your letter dated November 24, 2010, requesting that Apache include your proposed resolution in its proxy materials for Apache's 2011 annual meeting. Also, on November 29, 2010, we received a copy of a letter dated November 29, 2010, from you along with a letter from RAM Trust Services that appears intended to demonstrate that you satisfy the minimum ownership requirements of Rule 14a-8. Based on our review of the information provided by you, our records and regulatory materials, we have been unable to conclude that the proposal meets the requirements for inclusion in Apache's proxy materials, and unless you can demonstrate that you meet the requirements in the proper time frame, we will be entitled to exclude your proposal from the proxy materials for Apache's 2011 annual meeting.

As you know, in order to be eligible to include a proposal in the proxy materials for Apache's 2011 annual meeting, Rule 14a-8 under the Securities Exchange Act of 1934 requires that a stockholder must have continuously held at least $2,000 in market value or 1% of Apache's common stock (the class of securities that will be entitled to be voted on the proposal at the meeting) for at least one year as of the date that the proposal is submitted. The stockholder must continue to hold those securities through the date of the meeting. You state in your letter that "Rule 14a-8 requirements are intended to be met including continuous ownership of the required stock value," however, we have been unable to confirm your current ownership of Apache stock, or the length of time that you have held the shares.

Although you have provided us with a letter from RAM Trust Services, which states that you have held no less than 50 shares of Apache common stock through RAM Trust Services, who in turn holds those shares through The Northern Trust Company, the letter does not identify the record holder of the shares or include the necessary verification. Apache has reviewed the list of record owners of the company's common stock, and neither you, nor RAM Trust Services, nor Northern Trust is listed as an owner of Apache common stock. Pursuant to SEC Rule 14a-8(b), since neither you, nor RAM Trust Services, nor Northern Trust appear to be record holders of Apache common stock, you must provide a written statement from the record holder of the shares you claim to beneficially own verifying that you continually have held the required amount of Apache common stock for at least one year as of the date of your submission of the

2000 POST OAK BOULEVARD / SUITE 100 / HOUSTON, TEXAS 77056-4400

(713) 296 6000
WWW.APACHECORP.COM

December 7, 2010

Mr. John Chevedden

***FISMA & OMB Memorandum M-07-16***

Re: Rule 14a-8 Proposal

Dear Mr. Chevedden:

On November 29, 2010, we received your letter dated November 24, 2010, requesting that Apache include your proposed resolution in its proxy materials for Apache's 2011 annual meeting. Also, on November 29, 2010, we received a copy of a letter dated November 29, 2010, from you along with a letter from RAM Trust Services that appears intended to demonstrate that you satisfy the minimum ownership requirements of Rule 14a-8. Based on our review of the information provided by you, our records and regulatory materials, we have been unable to conclude that the proposal meets the requirements for inclusion in Apache's proxy materials, and unless you can demonstrate that you meet the requirements in the proper time frame, we will be entitled to exclude your proposal from the proxy materials for Apache's 2011 annual meeting.

As you know, in order to be eligible to include a proposal in the proxy materials for Apache's 2011 annual meeting, Rule 14a-8 under the Securities Exchange Act of 1934 requires that a stockholder must have continuously held at least $2,000 in market value or 1% of Apache's common stock (the class of securities that will be entitled to be voted on the proposal at the meeting) for at least one year as of the date that the proposal is submitted. The stockholder must continue to hold those securities through the date of the meeting. You state in your letter that "Rule 14a-8 requirements are intended to be met including continuous ownership of the required stock value," however, we have been unable to confirm your current ownership of Apache stock, or the length of time that you have held the shares.

Although you have provided us with a letter from RAM Trust Services, which states that you have held no less than 50 shares of Apache common stock through RAM Trust Services, who in turn holds those shares through The Northern Trust Company, the letter does not identify the record holder of the shares or include the necessary verification. Apache has reviewed the list of record owners of the company's common stock, and neither you, nor RAM Trust Services, nor Northern Trust is listed as an owner of Apache common stock. Pursuant to SEC Rule 14a-8(b), since neither you, nor RAM Trust Services, nor Northern Trust appear to be record holders of Apache common stock, you must provide a written statement from the record holder of the shares you claim to beneficially own verifying that you continually have held the required amount of Apache common stock for at least one year as of the date of your submission of the

proposal. As required by Rule 14a-8(f), you must provide us with this statement within 14 days of your receipt of this letter.
In addition, Rule 14a-8(b) requires that you state that you intend to hold the shares of Apache common stock that you beneficially own through the date of the meeting. Your submission, however, only states that "Rule 14a-8 requirements are intended to be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting." As required by Rule 14a-8(f), you must provide us with the statement required by Rule 14a-8(b) within 14 days of your receipt of this letter.

We have attached to this notice of defect a copy of Rule 14a-8 for your convenience.

If you adequately correct these problems within the required time frame, Apache will then address the substance of your proposal. Even if you adequately remedy these deficiencies, Apache reserves the right to raise any substantive objections it has to your proposal at a later date.

Sincerely,

Cheri L. Peper
RS Corporate Secretary

Attachment

# Exhibit D

Peper, Cheri

**From:** ***FISMA & OMB Memorandum M-07-16***
**Sent:** Monday, December 20, 2010 8:56 PM
**To:** Peper, Cheri
**Subject:** Rule 14a-8 Proposal (APA)

Dear Ms. Peper, Thank you for acknowledging the rule 14a-8 proposal. Based on the October 1, 2008 Hain Celestial no-action decision, Ram Trust Services is my introducing securities intermediary and hence the owner of record for purposes of Rule 14a-8(b). I intend to hold the shares of Apache common stock that I own through the date of the meeting. Please let me know if there is another question.
Sincerely,
John Chevedden